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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of: NOV 14 1996

November 7, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli *am by mm*
Staff Attorney

SUBJECT: Draft AO 1996-35

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 14, 1996.

Attachment

DRAFT

1
2 **ADVISORY OPINION 1996-35**

3
4 **Betty K. Wood, Clearinghouse Coordinator**
5 **Greens/Green Party USA**
6 **P.O. Box 100**
7 **Blodgett Mills, NY 13738**

8
9 **Dear Ms. Wood:**

10
11 **This refers to your letter dated August 2, 1996, and subsequent submissions**
12 **requesting an advisory opinion regarding whether the Greens/Green Party USA (“the**
13 **Green Party”) is a “national committee” of a political party for purposes of the Federal**
14 **Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations.**

15 **You state that your organization is recognized throughout the U.S. as the national**
16 **representative organization of the Green Party movement.¹ You state that the Green**
17 **Party is mounting a national presidential campaign with Ralph Nader as its candidate.**
18 **According to publicly available sources, Mr. Nader is on the ballot as a candidate of the**

¹ As part of your request, you have provided copies of the Party's Bylaws and Articles of Incorporation. These indicate that the Green Party is organized as an incorporated nonprofit membership organization in the State of Missouri. Its purpose is listed in Article V of the Articles of Incorporation as promoting conduct and political action within the context of the ten “key values”: ecological wisdom, grassroots democracy, social justice, nonviolence, decentralization, community based economics, feminism, respect for diversity, personal and global responsibility and future focus/sustainability. These ten values are repeated in the Green Party Bylaws, sections 1.2 and 1.3.

Various factions within the decentralized Green Movement strongly contest the claim of the Green Party to represent the movement. This is illustrated in a September 9, 1996, comment to the request made by Mr. Hank Chapot, a leader of the Green movement in California. Your original request and your response to Mr. Chapot's comment concede that not all Green organizations and Green state parties support, or are part of, the Greens/Green Party USA. In considering the claim of the Green Party to national committee status, this opinion will only consider political activity which, according to the submitted materials and other public sources, is linked to individuals or parties affiliated with Greens/Green Party USA. See footnotes two and three below.

1 Green Party or its affiliates in 16 states.² Your party is also running 8 candidates for the
2 U.S. Congress in 5 states.³

3 Besides the involvement of the Green Party in electoral contests, you cite various
4 other elements of party building activity which you present to support a claim to national
5 committee status. Among these elements are: the affiliation of the Green Party with 14
6 state organizations, the publication of party journals, the maintenance of a website on the
7 internet, and the holding of party conventions.⁴ The Party has also established national
8 headquarters located in Blodgett Mills, NY.⁵

9 The term "national committee" is defined by the Act as "the organization which,
10 by virtue of the bylaws of a political party, is responsible for the day-to-day operation of
11 such political party at the national level, as determined by the Commission." 2 U.S.C.
12 §431(14). See also 11 CFR 100.13. The term "political party" is defined by the Act as an
13 association, committee, or organization which nominates a candidate for election to any
14 Federal office whose name appears on the election ballot as the candidate of such
15 association, committee, or organization." 2 U.S.C. §431(16).

² Mr. Nader is on the ballot as a presidential candidate in a total of 22 states. However, in five of these states he is listed as an independent candidate and in Oregon he is listed as the candidate of a party (the Pacific Party) that does not seem to be affiliated with the Green Party.

³ These states are: Alaska, California, Massachusetts, New Mexico, and New York. Again, the candidates running in these states are either themselves members of the Green Party or are members of state parties that are affiliated with Greens/Green Party USA.

⁴ The Green Party held its first nominating National Convention as part of its annual party meeting on August 19, 1996, in Los Angeles California.

⁵ Mr. Chapot's comment challenged the existence of a national office for the Green Party. However, the facts of the opinion indicate that Blodgett Mills is the location of the Greens/Green Party USA Clearinghouse which serves as the Party Secretariat. See Green Party Bylaws, sections 3.3 .2.4; 4.2.1; and 5.2. The highest legislative body of the Green Party is its Green Congress which meets during the Party's annual convention. See Greens Party Bylaws, section 3.1. The Green Congress, in turn elects portions of the membership of the Green National Committee, which serves as its chief executive body. Other members of the Green National Committee are selected from the various Party caucus and state or local Party organizations. See Green Bylaws, section 3.3.

1 Therefore, to determine whether the Green Party is eligible for national committee
2 status, the Commission must first determine whether the Party qualifies as a "political
3 party" under the Act. You have provided documentation consisting of correspondence
4 from state authorities verifying that the Party's Congressional candidates achieved ballot
5 access in several states under the designation of either the Green Party or a state affiliate.
6 Secondary information (publicly available) confirms their ballot status. On this basis,
7 the Commission concludes that the Green Party would be a political party for purposes of
8 the Act. See Advisory Opinions 1995-16, 1992-44 and 1992-30.

9 The Commission has applied a number of criteria to determine whether a political
10 party or its committees have demonstrated sufficient activity on a national level to attain
11 national committee status. A committee demonstrates that it is a national committee of a
12 political party by the nomination of candidates for various Federal offices in numerous
13 states; by engaging in certain activities on an ongoing basis (rather than with respect to a
14 particular election) such as supporting voter registration and get-out-the-vote drives; and
15 by publicizing issues of importance to the party and its adherents throughout the nation.
16 Other indicia include the holding of a national convention, the establishment of a national
17 office and the establishment of state affiliates. See Advisory Opinions 1995-16, 1992-44,
18 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-96 and 1975-
19 129.

20 A committee or political party will not qualify for national committee status if its
21 activity is focused solely on the Presidential and Vice Presidential election (Advisory
22 Opinions 1980-131 and 1978-58), or if it is limited to one state (Advisory Opinion 1976-

1 95), or if it currently has only a limited number of Federal candidates on state ballots
2 (Advisory Opinion 1992-44, 1988-45).

3 The most important element in determining the extent of a committee or party's
4 national activity is the degree to which the organization successfully attains ballot access
5 for its Presidential and Congressional candidates. Every determination made by the
6 Commission regarding a party's national committee status has involved a political entity
7 that had, at a minimum, nominated and secured ballot access for its Presidential
8 candidates in a significant number of states. See, for example, Advisory Opinions 1995-
9 16, 1992-44, 1992-30, 1980-131 and 1978-58. While ballot access for Presidential
10 candidates will not alone qualify an organization as a national committee, the
11 Commission concludes that this element is a necessary prerequisite. The Commission
12 notes the success of the Party in attaining ballot access for Mr. Nader as its candidate for
13 President. However, there is a unique and problematic aspect to accepting Mr. Nader's
14 campaign as a Presidential candidacy for national committee purposes. Both your request
15 and publicly available information attest to Mr. Nader's determination to keep his
16 spending within the limits that would avoid his qualifying as a candidate under the Act.⁶
17 This intention is based on his stated desire to avoid the registration and reporting
18 obligations that apply to Federal candidates under the Act and Commission regulations.⁷

⁶ 2 U.S.C. §431(2) and 11 CFR 100.3 provide, in part, that candidate means an individual who seeks nomination for election, or election, to Federal office. An individual becomes a candidate for Federal office whenever any one of several events occur. One such event is when the individual has received contributions aggregating in excess of \$5,000 or made expenditures in excess of \$5,000.

⁷ Under the Act and Commission regulations, a Federal candidate must designate a principal campaign committee which itself must register and file reports with the Commission. See 2 U.S.C. §§432(e), 433(a) and 434(a)(3); and 11 CFR 101.1(a), 102.1(a) and 104.1.

1 However, if Mr. Nader is not a candidate for purposes of the Act, it follows he could not
2 be considered a candidate for purposes of 2 U.S.C. §§431(16) and 431(14).⁸

3 The Green Party's efforts on behalf of its other Federal candidates also indicate
4 the limited extent of the Party's efforts both in terms of the number of States and number
5 of candidates. For example, in the 1996 general election, the Party had achieved ballot
6 access in only five states for only eight of its candidates seeking election to the U.S.
7 House or Senate.⁹ Considering all these factors together, the Commission concludes that
8 Greens/Green Party USA, at this time, has not manifested sufficient national activity to
9 qualify as the national committee of a political party under the Act. The Commission's
10 determination does not preclude the attainment by the Green Party of national committee
11 status at a future date pursuant to another advisory opinion request. See Advisory
12 Opinion 1992-44 (U.S. Taxpayers Party denied national committee status) and Advisory
13 Opinion 1995-16 (U.S. Taxpayers Party granted national committee status).

14 This conclusion means that the Green Party may not accept contributions for its
15 Federal account in amounts greater than \$5,000 per year, per donor. See 2 U.S.C.
16 §§441a(a)(1)(C), 441a(a)(2)(C). Furthermore, the Party and its committees may not

⁸ The Commission assumes that Mr. Nader intends to restrict his campaign contributions and expenditures to a level below the financial threshold for candidate status. This assumption is accepted for the limited purpose of this opinion only and without regard to any factual determination or findings that might be made as part of any other Commission process. See 2 U.S.C. §437g.

⁹ This level of activity is distinguishable from the situation in Advisory Opinion 1995-16, where the Commission granted national committee status to the U.S. Taxpayers Party following the denial of such status in Advisory Opinion 1992-44. At the time of its second request, the U.S. Taxpayers Party had obtained ballot access for 14 of its candidates for the U.S. Congress or Senate in six States. The current situation of the Green Party would seem closer to that of the U.S. Taxpayers Party in its first request in Advisory Opinion 1992-44. The Commission, in denying the Party's first request for national committee status, found that the US Taxpayers Party had obtained ballot access for nine Congressional candidates in three States. The Commission also notes that in both requests, the candidate status of the U.S. Taxpayers party's Presidential candidate did not contain the problematic aspects found in Mr. Nader's candidacy.

1 make expenditures pursuant to 2 U.S.C. §441a(d). Since no specific transaction or
2 activity relating to Chapters 95 or 96 of the Internal Revenue Code of 1954 was
3 presented, this opinion does not reach any issues as to the eligibility of the Greens/Green
4 Party USA's Presidential candidate(s) to receive Federal matching funds under 26 U.S.C.
5 §§9031-9042 for use in the primary elections, nor as to entitlement to general election
6 funding under 26 U.S.C. §§9001-9012. Similarly, this opinion does not reach the issue of
7 entitlement of the Green Party to receive convention financing under 26 U.S.C. §9008.

8 This response constitutes an advisory opinion concerning the application of the
9 Act, or regulations prescribed by the Commission, to the specific transaction or activity
10 set forth in your request. See 2 U.S.C. §437f.

11 Sincerely,

12
13
14 Lee Ann Elliott
15 Chairman
16

17 Enclosure (AOs 1995-16, 1992-44, 1992-30, 1988-45, 1980-131, 1980-121, 1980-96,
18 1980-3, 1978-58, 1976-112, 1976-95 and 1975-129)